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If he continues to act as if the contract were still subsisting, after knowledge of the fraud, he will be deemed to have waived objection on that account.

9. CONTRACTS.—*Fraud—Disaffirmance—Delay—Injury to guilty party.* The duty to promptly disaffirm a fraudulent transaction is not dependent upon proof of injury, by the delay, to the other party.

10. CONTRACTS.—*Fraud—Acquiescence—Promise to expurgate fraud.* Acts of acquiescence or disaffirmance of a contract obtained by fraud do not take away from the innocent party the right to disaffirm, if they were induced by a reasonable expectation on his part that the fraud of which he complained would be expurgated, or an arrangement satisfactory to him made by the other party.

DANVILLE STREET CAR Co. v. WATKINS.—Decided at Richmond, January 18, 1900.—*Keith, P:*

1. CONTRIBUTORY NEGLIGENCE—*Known dangers.* It is the duty of one who is exposed to a known danger, although he may not know the full extent of it, to use ordinary care to protect himself from any injury whatever, and he is guilty of contributory negligence if he is the author of any part of the injury resulting from his failure to exercise such care, or if, by the exercise of such care, he could have avoided the consequences of negligence ascribed to another.

2. INSTRUCTIONS—*Evidence to support.* It is error to give an instruction when there are no facts in the case to which it can be applied.

3. CONTRIBUTORY NEGLIGENCE—*Brakeman—Overhead wires—Avoiding known danger.* Although it may be negligence in an electric company to permit its wires over a railroad track to hang so low as to interfere with brakemen standing on tops of the cars of the railroad company, yet if a brakeman well knowing the position of such wires, and without such urgent and imperative necessity as to justify unusual risks, attempts to pass from the top of one car to another while passing under such wire, he is guilty of such contributory negligence as will preclude a recovery from the electric company.

CITY OF NORFOLK v. YOUNG AND OTHERS.—Decided at Richmond, January 18, 1900.—*Buchanan, J :*

1. LOCAL ASSESSMENTS—*Tax—Notice—“Due process”—Amendment XIV U. S. Constitution.* Local assessments by municipal corporations for street improvements are an exercise of the taxing power of the State, and Article XIV of the amendments of the Constitution of the United States applies to them. A law which authorizes them, without giving to the person of whom such assessment is exacted reasonable notice, and a reasonable opportunity to appear and contest the legality, justice and correctness of such assessment before an impartial tribunal, before it is finally determined upon, deprives such person of his property without “due process of law,” and is therefore void.

2. LOCAL ASSESSMENTS—*Opportunity to contest—Amendment XIV of U. S. Constitution.* A section of a municipal charter which authorizes local assessments by the council for street improvements, upon the written petition of a majority of the owners of the property to be assessed, or, without such petition, by a vote of the majority of all the members elected to the council, after publication for twenty

days in two or more newspapers published in the municipality of a resolution declaring such assessment to be expedient, is in contravention of Amendment XIV of the Constitution of the United States, and therefore void, as it provides no tribunal before which, place where, or time within which, parties to be affected may contest the legality, justice, or correctness of the assessment. If the publication is intended as notice to appear before the council and contest the assessment, and that be the law, it is not full and clear enough to disclose that fact to a person of ordinary intelligence.

JONES v. CITY OF WILLIAMSBURG.—Decided at Richmond, January 18, 1900.—*Riely, J.:*

1. **MUNICIPAL CORPORATIONS**—*Governmental duties—Private or ministerial duties—Liability.* The powers conferred upon a municipal corporation for the government of that portion of the public residing within its limits are called governmental, legislative, or discretionary powers. For injuries resulting from the failure to exercise these powers, or for their negligent or improper exercise, the municipality is not liable. But powers and privileges conferred for its private advantage impose corresponding duties which are ministerial and absolute. For injuries resulting from a failure to exercise these powers and duties, or for negligence in their exercise the municipality is liable in an action for damages in the same manner as a private individual.

2. **MUNICIPAL CORPORATIONS**—*Laying out streets—Keeping streets in order.* The right to lay out streets and to regulate their use when laid out, and to suspend such regulations at pleasure, are governmental and discretionary powers, but, when laid out, the duty to keep them in a reasonably safe condition for travel is a ministerial and positive duty. For their safe condition the municipality is liable, but for their unlawful or improper use it is not.

3. **MUNICIPAL CORPORATIONS**—*Streets—Sidewalks—Bicycles—Failure to pass ordinance.* Bicycles are vehicles, and should not be ridden on sidewalks, but, if so ridden, the municipality is not liable for damages resulting from a collision with a pedestrian, merely because it failed to pass an ordinance forbidding such use of its sidewalks.

ROUZIE v. DANGERFIELD.—Decided at Richmond, January 18, 1900.—*Riely, J. Absent, Cardwell, J.:*

1. **CONTRACTS**—*Fraud in procurement—Election—How made—Promptness.* A contract procured by fraud is voidable at the election of the party defrauded. The election may be by word or deed, but, once made, it is final. If he elect to recind he must do so promptly on discovery of the fraud, or else he will be held to have waived the right.

BUCK v. GUARANTORS LIABILITY INDEMNITY CO. OF PENN., AND GUARANTORS FINANCE CO., OF PHILA.—DELFIELD v. SAME.—Decided at Richmond, January 18, 1900.—*Harrison, J.:*

1. **ATTACHMENTS**—*Deposits by foreign insurance company—Foreign creditors.* The treasurer of this State who holds, pursuant to chapter 53 of the Code, bonds or